IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.186 of 2004
Date of decision: 13.07.2010

New India Assurance Company Limited ....Appellant

versus

Mangi Devi and others ...Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Suman Jain, Advocate, for the appellant.

None for the respondents.

---

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether the judgment should be reported in the digest ?

K.Kannan, J. *(Oral)*

1. I find from the grounds urged that there has been already no question of law framed. On the facts pleaded, the question of law that arises for consideration in this case is whether the Commissioner has determined the proper working status of the workman to arrive at the salary as claimed to have been paid to the workman.

2. The vehicle involved in the accident was a truck and the employer gave evidence to the effect that he was paying Rs.800/- per month. The age as per the ration card produced showed that he was aged 15 years and that as per the post-mortem certificate, it showed that he was 17 years. The mother gave evidence to the effect that the deceased was 20 to 21 years. The Commissioner held that the mother is the best

person to speak about the age but in the cross-examination, she stated that the age was 18 to 19 years. Though it observed that the mother was the most competent person to speak about the age struck the golden median and took the age to be 20 years.

3. Learned counsel appearing on behalf of the Insurance Company states that the Tribunal was in error in taking the income of Rs.4,000/- which was payable to the driver when he could not have worked as driver at that age for a heavy vehicle. The appropriate wage for a cleaner would be only Rs.3,000/- and instead of Rs.4,000/-, the wages were to be substituted as Rs.3,000/- then the compensation that would become payable would only be Rs.3,36,000/-. The award of the Tribunal is, under the circumstances, modified and there shall be compensation for Rs.3,36,000/- with interest at 12% from the date of accident namely 08.07.2002 till the payment. It appears that the whole amount has already been deposited and it turns out that the claimants have recovered the money from the insurer. The Insurance Company will be entitled to recover the same paid in excess only against the employer and not from the claimants. Subject to this modification, the appeal is allowed in part.

(K.KANNAN)
JUDGE

13.07.2010
sanjeev